PERDANA FINANCE BHD.

v.

AZMI AHMAD & ORS.

HIGH COURT MALAYA, ALOR SETAR
HISHAMUDIN YUNUS J
[CIVIL APPEAL NO: 11-23-96]
1 MARCH 1997

CIVIL PROCEDURE: *Appeal - Interlocutory appeal - Appeal from Magistrate's Court to High Court - Procedural requirements - Form 141 - Whether Magistrate duty-bound to issue and serve Form 141 - Memorandum of appeal - Filing of - Whether incumbent on appellant to file memorandum - Order 49 r. 6(3) of Subordinate Courts Rules 1980 - Order 55 r. 2 of Rules of the High Court 1980 - Proper import*

This case concerns an interlocutory appeal from a Magistrate's Court to the High Court, and the question of whether, upon the proper reading of O. 55 r. 2(1) Rules of the High Court 1980 ('RHC') and O. 49 rr. 2(3) and 2(4) Subordinate Courts Rules 1980 ('SCR'), it was incumbent on the appellant in such an appeal to file the memorandum of appeal, and hence be issued with Form 141 by the Court appealed from. The facts were that the appellant had appealed against the Magistrate's dismissal of its summary judgment application. Having filed the requisite notice of appeal, the appellant sought to file the memorandum of appeal as required by O. 55 r. 2(1) RHC, and inquired from the Court about Form 141. The learned Magistrate, however, informed the appellant that Form 141 would not be issued as service thereof was no longer necessary in view of the ruling in *Pembinaan Nadzri Sdn. Bhd. v. Koon Hoe & Co. Sdn. Bhd.* [1996] 2 CLJ 1038; CLJ JT 15/96. It was not in dispute that in *Pembinaan Nadzri* the High Court had ruled that by reason of O. 49 r. 6(3) SCR, an appellant in an interlocutory appeal is not required to be served with Form 141 and hence not required to file any memorandum of appeal. The appellant argued, nonetheless, that on the authority *inter alia* of the Court of Appeal in *Yupaporn Seangarthit v. Neil Allan Campbell Webb* [1996] 1 CLJ 43, the requirement of filing and serving the memorandum of appeal had not been dispensed with, and consequently the Magistrate was duty-bound still to serve Form 141. This apart, the appellant also argued in effect that *Pembinaan Nadzri* was wrong in not following *Yupaporn*, and ought not to be followed.

Held:

[1] The *ratio decidendi* of *Yupaporn* can be summed up as follows. An interlocutory appeal from a subordinate Court is governed by O. 55 r. 2 of the RHC, and so an appellant in an interlocutory appeal must be served with Form 141, and upon being so served, must file and serve the memorandum of appeal as required by the said O. 55 r. 2; It is also the Court's ruling that O. 49 r. 6(3) does not in any way abrogate this requirement.

[2] On the matter before this Court, the decision of the Court of Appeal in *Yupaporn* is an authoritative decision which the Magistrate's Court as well as this Court are bound to follow, in conformity with the doctrine of *stare decisis*.

[3] A Court may distinguish an earlier decision when it finds that the case before it does not fall within the *ratio decidendi* of the earlier decision because of some material difference of fact. This apart, it can also distinguish an earlier decision by cutting down the *ratio decidendi* of that earlier decision. By the latter method the Court cuts down the *ratio decidendi* of the earlier case by treating as material to the earlier decision some fact, present in the earlier case, which the earlier Court regarded as immaterial, or by introducing a qualification or an exception into the rule stated by the earlier Court.

[4] The learned Judicial Commissioner in *Pembinaan Nadzri,* in not following *Yupaporn*, had not distinguished that latter case, but distinguished rather the decision of the High Court in *Syarikat Kayu Bersatu Sdn. Bhd. v. UMW (Sarawak) Sdn. Bhd*., a case referred to in and cited with approval by *Yupaporn*. It was on the basis of having been able to distinguish *Syarikat Kayu Bersatu* that his Lordship found it justified to rule that he was not governed by the decision in *Yupaporn*, and on that ground, ruled further that the question of whether or not he was bound by *"stare decisis"* did not at all arise.

[5] The learned Judicial Commissioner's reasoning in *Pembinaan Nadzri*, as a method of dealing with a binding precedent, is rather difficult to follow. It cannot be appreciated as to how his Lordship could have placed so much emphasis on a mere "observation" made by the Court of Appeal on *Syarikat Kayu Bersatu*, when the Court of Appeal in *Yupaporn*, apart from making the "observation", had also deliberated on the interpretation of O. 55 r. 2 RHC and had given its opinion on the same.

[6] Although the learned Judicial Commissioner in *Pembinaan Nadzri* asserted that he was not distinguishing *Yupaporn*, yet the reasoning carried out by his Lordship seems to have resulted in an indirect distinguishing of that very decision. With respect, such an approach is not supported by authority. In the circumstances, this Court is impelled to disagree with the decision of, and the approach adopted by the learned Judicial Commissioner in *Pembinaan Nadzri*.

[7] The stand adopted by the Court of Appeal in *Yupaporn* on the interpretation of O. 55 RHC and O. 49 SCR is not a mere "observation" or an *obiter dicta*. The opinion expressed thereon, on the contrary, constitutes the very basis of the Court's decision. It must therefore follow, that in respect of this interlocutory appeal, O. 49 r. 6(3) SCR does not exempt the appellant from complying with O. 55 r. 2 of the RHC. Rule 6(3), in effect, only dispenses with the need **to include in the record of appeal** the notes of evidence, the grounds of judgment or any memorandum of appeal. And it follows further that the Magistrate's Court is under a duty to issue Form 141 in accordance with the said O. 49 r. 2(4) SCR.

[Appeal allowed. Magistrate's Court ordered to prepare copies of grounds of judgment and notes of evidence and issue Form 141.]

Cases referred to:

Pembinaan Nadzri Sdn Bhd v. Koon Hoe & Co. Sdn. Bhd. [1996] 2 CLJ 1038; CLJ JT 15/96 ***(not foll)***

Yupaporn Seangarthit v. Neil Allan Campbell Webb [1996] 1 CLJ 43 ***(foll)***

Thye Ye Ind. Sdn. Bhd. v. Malaysia Coconut Coir Industrial Co. [1996] 3 AMR 3908 ***(foll)***

Tan Ah Tee & Anor. v. Paimon bin Kasiran [1996] 3 CLJ 313 ***(foll)***

Syarikat Kayu Bersatu Sdn. Bhd. & Ors. v. UMW (Sarawak) Sdn. Bhd. [1995] 1 CLJ 113 ***(foll)***

Vong Ban Hin v. Laksamana Realty Sdn. Bhd. [1996] 4 CLJ 852 ***(not foll)***

Legislation referred to:

Courts of Judicature Act 1964, s. 35

Rules of the High Court 1980, O. 55 r. 2(1), O. 92 r. 4

Subordinate Courts Rules 1980, O. 26A, O. 49 rr. 2(3), 2(4), 6(3)

Other source referred to:

Determining the Ratio Decidendi of a Case – Essays in Jurisprudence of the Common Law, Goodhart, (1931) 1

For the appellant - Hardeep Singh Jessy; M/s. Paul Chong & Kraal

For the respondents - Ahmad Taufiq bin Baharum; M/s. Abdul Halim Said & Co.

JUDGMENT

Hishamudin Yunus J:

At the Magistrate's Court, Alor Setar, the appellant (the plaintiff in the civil suit at the Magistrate's Court) made an application for summary judgment under O. 26A of the Surbordinate Courts Rules (the 'SCR') but it was dismissed by the Court. The appellant, dissatisfied with the decision, filed a notice of appeal. This appeal is sometimes conveniently referred to as an interlocutory appeal because the decision (appealed from) was not made after a trial.

More than a month after the filing of the notice of appeal, the appellant's solicitors wrote to the Magistrate's Court inquiring about From 141. In doing so, the solicitors were relying on O. 55 r. 2(1) of the Rules of the High Court (the 'RHC') and O. 49 r. 2(3) and (4) of the SCR. Order 55 r. 2(1) states:

> **2. Memorandum of Appeal**
>
> (1) The appellant shall, within fourteen days from the date of service on him of the notice in Form 141 under O. 49, r. 2 sub-r. (4) or r. 3 sub-r. (2) of the Subordinate Courts Rules 1980 (as the case may be), file in the High Court in duplicate a memorandum of appeal in Form 113A.

Order 49 r. 2(3) and (4) of the SCR provides:

> 2. Notice of Appeal
>
> (1) ...
>
> (2) ...
>
> (3) The notice of appeal shall be filed within 14 days from the day on which the decision was pronounced. The Court appealed from shall thereupon supply to the appellant, upon payment of the fee therefor a certified copy of the notes of evidence, a certified copy of the judgment, or, in case no written judgment has been delivered, of the grounds of decision.
>
> (4) As soon as the certified copy is ready, the Court shall notify the appellant in Form 141.

Subsequently, the solicitors received a reply from the Magistrate's Court, Alor Setar, dated 19 August 1996 informing that the Court would not be issuing Form 141 in view of O. 49 r. 6 of the SCR as interpreted by the High Court in *Pembinaan Nadzri Sdn. Bhd. v. Koon Hoe & Co. Sdn. Bhd.* [1996] 2 CLJ 1038.

Order 49 r. 6 reads:

6. Appeal to Judge in Chambers.

(1) Notwithstanding anything contained in this Order, an appeal shall lie to a Judge in Chambers from any decision made by the Court other than a decision made after trial.

(2) The appeal shall be brought by filing a notice of appeal in Form 140 within 14 days from the day on which the decision was pronounced, and serving a copy of the notice on every other party to the proceedings within the time limited for the filing of appeal to the Registrar of the High Court.

(3) Within three weeks after the filing of the notice of appeal, the appellant shall file the record of appeal in the High Court and the record shall contain copies of:

(a) the application for the decision;

(b) the statement of claim, and where defence has been filed, the statement of defence;

(c) all affidavits filed in support of or in opposition to the application; and

(d) the decision appealed from,

but shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

This case now before me is an application by the appellant pursuant to s. 35 of the Courts of Judicature Act 1964 (or, alternatively, under O. 92 r. 4 of the RHC) seeking this Court to direct the Magistrate's Court to issue the appellant with Form 141 so as to enable the appellant to have the certified notes of evidence and grounds of judgment and thereafter to enable it to file the memorandum of appeal.

In support of this application, the learned Counsel for the applicant/appellant, Encik Hardeep Singh Jessy, relied on O. 55 r. 2 of the RHC, the decision of the Court of Appeal in *Yupaporn Seangarthit v. Neil Allan Campbell Webb* [1996] 1 CLJ 43, and two High Court decisions, namely, *Thye Ye Ind. Sdn. Bhd. v. Malaysia Coconut Coir Industrial Co.* [1996] 3 AMR 3908 and *Tan Ah Tee & Anor. v. Paimon bin Kasiran* [1996] 3 CLJ 313.

The learned Counsel for the respondents, Encik Ahmad Taufiq, supports this application.

I agree with learned Counsel that, on the matter now before me, the decision of the Court of Appeal in *Yupaporn*, is an authoritative decision which the Magistrate's Court as well as this Court are bound to follow, in conformity with the doctrine of precedent (or the principle of *stare decisis*, i.e. to stand by cases already decided), which is one of the fundamental principles of our legal system.

However, in view of the stand adopted by the Magistrate's Court, as expressed in its letter, I feel duty-bound to dwell further on the two cases cited therein, namely, *Yupaporn* and *Pembinaan Nadzri*.

What is the *ratio decidendi* in *Yupaporn*? The *ratio decidendi* of a case can be defined as the material facts of the case plus the decision thereon (Goodhart, *Determining the Ratio Decidendi of a Case – Essays in Jurisprudence of the Common Law* (1931) 1).

In *Yupaporn*, the material facts are as follows. At the Magistrate's Court, the plaintiff sued the defendant for breach of contract and applied for summary judgment under O. 26A of the Subordinate Courts Act. The plaintiff did not succeed. Dissatisfied with the decision of the Magistrate's Court, the plaintiff appealed to the High Court. Form 141 was served by the Magistrate's Court on the plaintiff's/appellant's solicitors. However, the plaintiff did not file the memorandum of appeal. The High Court dismissed the appeal on the ground that the plaintiff/appellant had failed to file the memorandum pursuant to O. 55 r. 2 of the RHC. Still dissatisfied, the plaintiff/appellant decided to appeal to the Court of Appeal. At the hearing of the application for leave to appeal, the same issue that was raised before the High Court was argued again by both parties, that is, whether the appellant, as a matter of procedure, was required to file the memorandum of appeal.

The plaintiff/appellant submitted that, as a matter of procedure, the memorandum of appeal was not required to be filed and served because the appeal was merely an interlocutory appeal and that, in respect of such appeals, O. 49 r. 6(3) has dispensed with such a requirement.

The defendants/respondents on the other hand contended that the appellant was required to file and serve the memorandum of appeal even though the appeal was an interlocutory appeal. The learned Counsel cited O. 55 of the RHC.

The Court of Appeal accepted the defendants'/respondents' submission and rejected the plaintiff's/appellant's argument and, accordingly, dismissed the application for leave. The Court of Appeal, in its judgment, ruled that although the appellant's appeal was an interlocutory appeal, nonetheless, under O. 55 r. 2 the appellant was still required to file the memorandum of appeal after

having been served with Form 141 and that O. 49 r. 6(3) does not in any way do away with such requirement. The following is the crucial part of the judgment (at p. 46):

> Before us appellant's Counsel made the same submission she made in the Court below. It did not find favour with us.
>
> The issue is admirably covered in the *Syarikat Kayu Bersatu Sdn. Bhd. & 2 Ors v. UMW (Sarawak) Sdn. Bhd.* [1995] 1 CLJ 113 by YA Tuan Richard Malanjum J. We entirely agree with what he has said.
>
> Although O. 49 r. 6(3) could have been more clearly worded it cannot be understood to mean that it has abrogated the requirement of O. 55 r. 2 of the Rules of the High Court 1980.
>
> In the present case Form 141 was served on the appellant's solicitors on 3 January 1994. They should have followed up by filing and serving the memorandum of appeal within 14 days thereafter together with a copy of the appeal record. This they did not do so.

Taking the above passage in the judgment together with the material facts, the *ratio decidendi* of the decision in *Yupaporn*, to my understanding, is simply this.

An interlocutory appeal from a subordinate Court to the High Court is governed by O. 55 r. 2 of the RHC; thus an appellant in an interlocutory appeal must be served with Form 141, and upon being so served, must file and serve the memorandum of appeal as required by the said O. 55 r. 2; and that O. 49 r. 6(3) does not in any way abrogate this requirement.

Now, coming to *Pembinaan Nadzri*, the case cited in the letter from the Magistrate's Court, the material facts of that case are somewhat similar to the facts in *Yupaporn*. Like *Yupaporn*, *Pembinaan Nadzri* concerns an interlocutory appeal from a Magistrate's Court to the High Court. Also, like *Yupaporn*, in *Pembinaan Nadzri*, the appellant did not file or serve the memorandum of appeal. However, unlike *Yupaporn*, in *Pembinaan Nadzri*, the appellant was never issued by the Magistrate's Court with Form 141. Despite the decision of the Court of Appeal in *Yupaporn*, the learned Judicial Commissioner who heard the case held that by reason of O. 49 r. 6(3) an appellant in an interlocutory appeal is not required to be served with Form 141 and therefore such appellant is not required to file any memorandum of appeal.

The learned Judicial Commissioner, however, did appreciate the fact that he was bound by the decision in *Yupaporn*. His Lordship stated it clearly in his judgment (at pp. 1044-1045):

> At this juncture, permit me to emphatically stress here that, since *Yupaporn's* case, *supra* is the decision of the Court of Appeal arising from O. 26A SCR application, unless and until the said decision has been overruled by a higher Court or distinguished by a Court of co-ordinate jurisdiction, I am bound to follow that decision based on the principle of *stare decisis*.

However, the learned Judicial Commissioner, in his judgment, went on to hold that he was not governed by the decision in *Yupaporn*. His Lordship was of the opinion that he was not governed, not because he was able to distinguish *Yupaporn*, but because he was able to distinguish the decision of the High Court in *Syarikat Kayu Bersatu Sdn. Bhd. & Ors. v. UMW (Sarawak) Sdn. Bhd.* [1995] 1 CLJ 113, a decision cited with approval by the Court of Appeal in *Yupaporn*. This is what the learned Judicial Commissioner said (at p. 1045):

> Entertaining that fact, I am of the most humble view and stand to be corrected by the higher Court, I should not blanketly accept the principle of *stare decisis* if it can be demonstrated that, Mr. Justice Richard Malanjum's decision can be distinguished, and or shown not to have been adequately dealt with in relation to the effect(s) of the aforesaid two Orders. It must be so, because it is not the decision of the appellate Court that I am distinguishing, but a decision of another High Court sitting in Sarawak. It is with that in mind, that I will endeavour to distinguish the said *Syarikat Kayu Bersatu's* case with what I consider as to how those two Orders ought to be reviewed, and consequentially the necessary ruling(s) as to Cik Chew's objection.

This part of the judgment must be read with an earlier passage in his Lordship's judgment (at p. 1044):

> From Cik Chew's submission, it was obvious that heavy reliance was placed by her to the words -
>
> ... [O. 49 r. 6(3)] has [not] abrogated the requirement of O. 55 r. 2 of the RHC
>
> in *Yupaporn's* case, *supra*. However, with respect to her, what was perhaps not appreciated by her was the observation of the Court of Appeal when it stated as follows:
>
> > The issue is admirably covered in *Syarikat Kayu Bersatu Sdn. Bhd. & Ors. V. UMW (Sarawak) Sdn. Bhd.* [1995] 1 CLJ 113, by Richard Malanjum J. We entirely agree with what he has said.
>
> From the above observation, I could draw two inferences which require and justify further analysis before any ruling can be made whether or not to allow Cik Chew's objection. They are:

(i) "The issue is admirably covered ... by Richard Malanjum J"; and

(ii) "That [the appellate Court] entirely agree[d] with what he has said [in that case]."

Those two inferences led me further to infer that Mr. Justice Richard Malanjum must have dealt at length with the effect of O. 49 r. 6(3) of the SCR in relation to O. 55 r. 2 of the RHC when deciding the *Syarikat Kayu Bersatu's* case *supra.* It must have been upon his Lordship's reasons, and nothing else, that, the appellate Court agreed with him, and held that the memo, in all appeals flowing from all O. 26A SCR applications, must be filed in accordance with the requirements of O. 55 r. 2.

It will be observed that the learned Judicial Commissioner, after having said that he endeavoured to distinguish *Syarikat Kayu Bersatu*, embarked on a critical examination of Richard Malanjum J's reasoning in that case and on an analysis of O. 49 r. 6. Thereafter, his Lordship came to the conclusion that there was no necessity for the appellant in the interlocutory appeal before him to file the memorandum of appeal. His Lordship also concluded that the question whether or not he was bound by the principle of *stare decisis* (obviously referring to the decision in *Yupaporn*) did not arise. The following is what the learned Judicial Commissioner said (at p. 1051):

In conclusion and on the premises above, it is my most humble and considered conclusion, and with utmost respect to Mr. Justice Richard Malanjum, that, there is certainly no need to file the memo in respect of any appeal arising from an O. 26A, SCR application after 1 August 1993. *Since my disagreement with his Lordship is on his analysis of substantive issue which was fully endorsed by the Court of Appeal in the said Yupaporn's case, supra, it is therefore again my most humble and considered opinion that, the question of whether or not I am bound by the principle of "stare decisis" does not arise.* [Emphasis is mine.]

With the greatest respect, I must humbly confess here that I do find the above reasoning, as a method of dealing with a binding precedent (i.e. the decision in *Yupaporn*), rather difficult to follow. I must humbly admit that I am unable to appreciate the rationale (or what is the relevance) for his Lordship to place so much emphasis on only an "observation" (to use the very word used by his Lordship) made by the Court of Appeal on *Syarikat Kayu Bersatu*; and I am also unable to appreciate why his Lordship took pains trying to "distinguish" that case (*Syarikat Kayu Bersatu*) or to show that O. 55 r. 2 and O. 49 r. 6 "not to have been adequately dealt with" by Richard Malanjum J. With the greatest respect, and if I may be permitted to ask, did not the Court of Appeal in *Yupaporn*, apart from making the observation on *Syarikat Kayu Bersatu*, also deliberate and give its own opinion on the interpretation of O. 55 r. 2 and O. 49 r. 6? And is this not the most important part of the Court of Appeal's judgment that merits greater attention?

Be that as it may, what I do observe is that, although the learned Judicial Commissioner asserted that he was **not** distinguishing *Yupaporn*, yet the reasoning carried out by his Lordship, to my humble observation, somehow seems to have resulted in some sort of an **indirect distinguishing** of that very decision. With the greatest respect and humility, I am unable to recall any authority which supports such an approach.

Now, speaking of distinguishing a precedent, whether binding or not, perhaps it is not out of place for me here to add that all that I know of on this subject of distinguishing is that the conventional methods as practised by our judicial system are not that too complicated. First, a Court may distinguish an earlier decision when it finds that the case before it does not fall within the *ratio decidendi* of the earlier decision because of some material difference of fact. Secondly, it is also acceptable for a Court to distinguish an earlier decision by cutting down the expressed *ratio decidendi* of the earlier decision. By this latter method the Court cuts down the *ratio decidendi* of the earlier case by treating as material to the earlier decision some fact, present in the earlier case, which the earlier Court regarded as immaterial, or by introducing a qualification (exception) into the rule stated by the earlier Court. The former method is sometimes known as "non-restrictive distinguishing" and the latter method as "restrictive distinguishing".

Now, reverting to *Pembinaan Nadzri*, with respect, it is my humble view that the approach as adopted by the learned Judicial Commissioner, in relation to *Yupaporn*, does not seem to harmonise with any of the aforesaid conventional methods of distinguishing. Thus, with the greatest respect and humility I am impelled to disagree with his Lordship's approach.

However, there is the relatively recent High Court decision in *Vong Ban Hin v. Laksamana Realty Sdn. Bhd.* [1996] 4 CLJ 852 that views *Yupaporn* in a different light. The learned Judicial Commissioner in that case opined that what was said by Mahadev Shankar JCA (who delivered the judgment of the Court of Appeal) in *Yupaporn* on the interpretation of O. 55 of the RHC and O. 49 r. 6 of the SCR and the need to file the memorandum of appeal was a mere "observation". The learned Judicial Commissioner further held that, as the Court of Appeal was dealing with an application for leave to appeal, (to quote his Lordship - at p. 858) -

> ... it is open to question whether, in strictness, any observation made by the Court as to any question of law or fact involved amounts to more than a *dicta*.

With the greatest respect, in the light of my views above regarding what I consider to be the *ratio decidendi* in *Yupaporn*, I am unable to agree with this opinion. In my humble view, the stand adopted by the Court of Appeal on the interpretation of O. 55 of the RHC and O. 49 r. 6 of the SCR is not

a mere "observation" or an *obiter dicta*. Indeed, the opinion expressed by the Court of Appeal on these provisions constitutes the very basis of the Court's decision. It is true, however, as pointed out by the learned Judicial Commissioner, that the Court of Appeal was dealing with an application for leave to appeal. But, with respect, I fail to see how this fact can have a bearing on the status to be given to the *ratio decidendi* of that case.

I find support for the view that I take in the present case in *Thye Ye Ind.* (cited earlier in this judgment). This case also involves an interlocutory appeal from a Magistrate's Court to the High Court. The High Court registry had fixed the appeal for hearing although Form 141 had not been issued by the Magistrate's Court to the appellant and no memorandum of appeal had been filed. At the hearing of the appeal, the appellant, in response to a preliminary objection raised by the respondent concerning the contents of the appeal record, pointed out that the hearing of the appeal was premature as it (the appellant) had not been served with Form 141 and was thus deprived of the opportunity of filing the memorandum of appeal as required by O. 55 r. 2(1) of the RHC. The learned Judge, Abdul Kadir bin Sulaiman J, holding himself bound by the decision in *Yupaporn*, upheld the appellant's submission.

I also find support for my view in the case now before me in the judgment of the learned Judge, Abdul Malik bin Hj Ishak J, in *Tan Ah Tee* (cited earlier in this judgment).

In conclusion, I rule that in respect of this interlocutory appeal, in the light of the ruling of the Court of Appeal in *Yupaporn*, O. 49 r. 6(3) of the SCR does not exempt the appellant from complying with O. 55 r. 2 of the RHC. Rule 6(3) only dispenses with the need to include in the record of the appeal the notes of evidence, the grounds of judgment or any memorandum of appeal. I also rule that the Magistrate's Court is under a duty to issue Form 141 in accordance with O. 49 r. 2(4) of the SCR.

Accordingly, in the exercise of my powers under s. 35 of the Courts of Judicature Act 1964 it is ordered that the Magistrate's Court, Alor Setar, do prepare as soon as possible the certified copies of the grounds of decision and the notes of evidence, and as soon as the copies are ready, to notify the applicant/appellant in Form 141. [It is agreed by parties that there be no order as to costs.]

Finally, to end this judgment, may I respectfully refer to the sentiments as expressed by the Courts in respect of the drafting of O. 49 r. 6(3) of the SCR. In *Yupaporn* the Court of Appeal remarked (at p. 45):

a

It has proven once again that O. 49 r. 6 is a trap for the unwary.

At a later part of its judgment, the Court lamented (at p. 46):

... Order 49 r. 6(3) could have been more clearly worded ... .

b

In a somewhat similar vein, the learned Judge in *Thye Ye Ind.* remarked (at p. 3914):

In the light of the said decision of the Court of Appeal, it is suggested that the Rules Committee have a second look at the provisions of O. 49 r. 6 of the SCR and if necessary, amend the provisions to clearly express the intention of the legislature in relation to appeals against the decision given by the subordinate Courts, other than a decision made after trial.

c

And in *Tan Ah Tee* the learned Judge observed (at p. 320):

In view of the grey areas surrounding the interpretation of O. 49 r. 6(3)(a), (b), (c) and (d) of the SCR ...

d

On my part, I fully support these judicial sentiments. There is, without doubt, an urgent need to amend our rules of procedure to make the provisions clear so as to avoid further conflict of judicial views.

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Reported by WA Sharif

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